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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUANA ESTRELLA,

Plaintiff,

-against-

LOIS BOOKHARDT-MURRAY, M.D. and
MORRIS HEIGHTS HEALTH CENTER

Defendants.

NOTICE OF REMOVAL

from the Supreme Court of the
State of New York, County of
Bronx, Index No. 27402-2019

Morris Heights Health Center (the “Health Center”) and one of its employees, Dr. Lois Bookhardt-Murray (“Bookhardt-Murray”) (together, the “Federal Defendants”), by Audrey Strauss, Acting United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows.

1. The Federal Defendants are named as defendants in an action filed in the Supreme Court of the State of New York, County of Bronx, Index No. 27402-2019. A copy of the Complaint is attached hereto as Exhibit A.

2. Plaintiff alleges that from February 4, 2019, and dates thereafter, the Federal Defendants provided her with “medical care, evaluation, examination, treatment and diagnostic

care.” Cmpl. ¶ 10. Medical records indicate that Plaintiff was examined by Brookhardt-Murray for high-blood pressure and diabetes, with related follow-up post-examination. According to Plaintiff, the Federal Defendants were “negligent and careless” in providing this medical care. As a result, Plaintiff allegedly suffered personal injuries including, *inter alia*, pain and suffering, “intracranial hemorrhage, stroke, sensory and motor dysfunction and impairment.” Cmpl. ¶ 19. Plaintiff asserts a causes of action against the Federal Defendants for medical malpractice and seeks unspecified damages that exceed the jurisdictional limits of all lower New York state courts. *Id.* ¶ 21.

3. Pursuant to the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act of 1992 and 1995, 42 U.S.C. § 201 *et seq.*, during the relevant period, the Federal Defendants were deemed to be employees of the United States Public Health Service for purposes of civil actions seeking damages for personal injury resulting from the performance of medical, surgical, dental, or related functions. *See* 42 U.S.C. § 233(a), (g)-(h); Ex. B, Certification of Audrey Strauss, United States Attorney for the Southern District of New York, dated January 19, 2021. (the “Strauss Certification”).

4. The Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), and 2671-2680, provides the exclusive remedy with respect to Plaintiff’s claims against the Federal Defendants. *See* 42 U.S.C. § 233(a).

5. This action may be removed to this Court pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) because: (i) trial has not yet been had of this action; and (ii) this is a civil action brought against employees of the United States acting within the scope of their employment. As set forth in the Strauss Certification, the Federal Defendants were employees of

the United States and were acting within the scope of their employment for purposes of Plaintiff's claims against the Federal Defendants.

6. All other defendants who have been properly served are not required to consent to the removal of this case to federal court because the Federal Defendants have a statutory right to remove under 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2).

7. The Federal Defendants will promptly file a copy of this Notice of Removal with the Clerk of Court, Supreme Court of the State of New York, County of Bronx.

8. The submission of this Notice of Removal is solely for the special purpose of removing this action to the appropriate federal court and is not a general appearance by the Federal Defendants. This Office makes a limited appearance on behalf of the Federal Defendants solely for the purpose of removal of this action. This submission does not constitute a waiver of any defense available to the Federal Defendants, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York
January 23, 2021

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